Elder Abuse Law / Definition – Workgroup Notes September 16, 2013

Members Present: Anthony Carroll, Josy Gittler, Celene Gogerty (facilitator), Wendy Dishman, Janet O'Brien, Darrell Simmons, Ken Watkins, Craig Goettsch, Bob Welsh, and Kimberly Murphy (notetaker)

Members Absent: None

Focus: It's All About Bob...and Mary

1. Meeting Began With Generalized Discussion, Captured Below:

- **Concerns** with definitions. There are differences between exploitation of individuals in community versus facility. 235E presumes undue influence based on the nature of the relationship paid caregiver. Difficult to prove undue influence. Don't know if definitions used last time (2012 Report) will work.
- The DHS / DIA statues are for specific purposes. Do we add to this or create a new chapter. Is it strictly criminal, civil, used for registries?
- County attorneys don't know which statutes to utilize.
- Separate out what definition we want for state intervention, reporting, and investigation for APS. What we want for civil and criminal remedies. Reporting laws have a broad definition.
 Prosecution laws are very different and narrower. Need to talk about definition for specific purpose. We have another problem with community versus institutional settings.
- Federal definitions of abuse should be examined. Follow 235E which complies with the federal standards.
- MFCU units look at abuse, neglect, and exploitation from Medicaid perspective. Requires a Medicaid nexus.
- If we draft a separate elder abuse law, does it just add to the confusion? Now you have more statutes to try and figure out.
- DIA does civil prosecutions that surveyors have investigated. DIA also has Medicaid Fraud that conducts the criminal prosecutions. They do not do joint investigations and maintain separation between processes.
- We need to figure out what we want to use as the definition of what has to be reported by whom on a mandatory or voluntary basis.
- We shouldn't reinvent the wheel in regards to definitions. There is a national elder abuse resource center and they have specified certain categories and definitions.
- Yes, the definitions from the resource center could be used, but perhaps not for criminal purposes.
- What population would these definitions apply to? Would capacity play a role?

- Under current laws, dependency is required. And a caretaker has to be involved. This is where we need to start.
- Facilities make a presumption of dependency for purposes of reporting. Err on the side of over-reporting and let the agency make a dependency determination.
- We shouldn't have to presume dependency. An individual may not have a diminished capacity.
- What would the age category be? Is it 60 plus?
- Many people are offended by being called elderly and vulnerable at 60. It is difficult to explain that it is an additional protection.
- This is the challenge. There are people don't want to be protected as an elder. It's always a balance. It's difficult to take a hard line on age.
- Caretaker generally has to be part of the relationship. Are we going to require a caretaker be the perpetrator? How broad is this?
- If you look at the history of child abuse, it the perpetrator was initially restricted to parental perpetrators. It was broadened over the years. Rather than trying to reach a conclusion, perhaps look at the available options.

Let's go back to our goal. The way it is outlined, we have three buckets to work on. The three buckets are:

- Elder Abuse Definition
- MDTs
- Financial Exploitation If we haven't already addressed these issues via elder abuse definition

This is our ultimate charge, correct?

- Do we have to stick with the priorities that the LEAN Team came up with?
- No. Anything that needs to be changed by statute that is now a hindrance should be addressed by this workgroup.
- Financial exploitation is the easy one to tackle. Let's not ignore physical and psychological abuse, and neglect. Neglect is right up there at the top for individuals dealing with elder abuse on a regular basis.
- Should we take out caretaker as a requirement and a minimum age requirement and capture vulnerable under 60? Are we replacing 235E?
- Do you want separate civil and criminal?
- We want something that can make it through the legislative process, something viable.
- If we broaden the definition, we will trigger additional investigations.
- Agencies are already at their investigatory max. We don't want to broaden it too much.
- Do we need to amend or create a new statute?
- Funding and training for DAA investigations is very limited.
- If you want to keep the status quo, add an elder abuse law and put it into IDA.

- 2. General Discussion moved to review of 2012 Task Force Recommendations.
- 3. Following review of 2012 Task Force Recommendations, members were given the following assignments:

Elder Abuse: Ken, Wendy, Bob, Anthony (Josy takes one part)

- Elder Abuse Law what is an elder
- Caretaker status
- Physical or mental condition required
- Definition of abuse
- Criminal, civil, administrative, or combination Josy
- Amend current provisions or create a new law
- What do you do with the current coverage of 235B with mentally ill / intellectual disabilities who are being abused
- Which department or new department should be responsible
- Mandatory reporting -

Financial Exploitation Questions: Celene, Anthony, Josy

- Civil remedies need to make it into report
- o Continue to recommend uniform POA
- Registration of POA documents with acknowledgement of fiduciary duties
- Criminal remedies / enhanced penalties
- Protective orders
- Changing the inheritance law
- Look at what other states have done
- o Look at each individual recommendation from 2012 report

MDTs: Darrell and Bob

- Enforcement of existing statutes can use MDTs
- How are existing MDTs utilized
- What should they be used for? Assisted in coordinating prosecution

Full Review of Recommendations